IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8624 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

BACHUBHAI POPATLAL PATEL

Versus

STATE 0F GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr.N.D.GOHIL, A.G.P. for Respondent No. 1, 2 & 3

MR BHARAT T RAO for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 04/03/99

ORAL JUDGEMENT

1. Through this petition, under Article 226 of the Constitution of India, the petitioner has challenged the detention order dated 5.9.1998 passed by the District Magistrate, Mehsana, under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, and has prayed that the aforesaid detention order be quashed and he be released from illegal detention.

2. Brief facts are that the petitioner is holding Government approved fair price shop in the name of Patel Bachubhai Popatlal, Nagalpur village in Mehsana District, and is carrying on trade of the stock of food grain, sugar, wheat, rice, edible oil and kerosene through fair price shop. The Mamlatdar, Mehsana made casual inspection of fair price shop on 19.8.1998 and it was found that the petitioner had sold in black market seven Quintals of levy sugar directly out of 12 Quintal levy sugar lifted through bill No.1554 dated 19.8.1998. Thereafter Supply Inspector, Mehsana made detailed inspection for the period between 25.8.1998 on 31.8.1998. It was found that the petitioner was indulging in black marketing activity and profiteering activities in distribution and supply of essential commodities such as levy sugar, wheat, rice and palmolin oil meant for public distribution system. The details of irregularities in the manner in which the black marketing activity was continued and committed by the petitioner are given in the grounds of detention. In para : 10 of the grounds of detention black marketing activities of the petitioner in kerosene were also high-lighted inasmuch as against the fixed price of Rs.2.70 ps. per litre the petitioner was charging Rs.15/- for five ltrs. of kerosene. Further details regarding this activity are also indicated clearly in the grounds of detention. Alternative remedies were considered which were found to be inefficacious. Accordingly the impugned order of detention was passed.

3. The detention order has been challenged by the learned Counsel for the petitioner on various grounds.

4. The first contention has been that the report

submitted by the State Government to the Central Government was not at all considered by the Central Government which has vitiated the impugned order of detention. Reliance was placed upon the Full Bench pronouncement of Gauhati High Court in Hitendra Nath v/s. State of Assam reported in 1984 Cr.L.J. 1558. Shri B.T.Rao, learned Counsel representing the Union of India has frankly argued that the verdict of the Full Bench of Gauhati High Court is not correct. Such submission can be made from the bar, but this Court can not agree to this contention. It is true that under the doctrine of judicial precedent the verdict of another High Court, may be of Full Bench, has only persuassive value and it is not binding upon another High Court. If decision of another High Court has persuassive value it certainly means that it is entitled to respect and not to disrespect. Even if such decision is not binding on this Court it can exclude consideration of such decision by distinguishing it on facts that it does not apply to the facts of the case. However, that course is also not open because this very question was directly involved before the Full Bench of the Gauhati High Court whether the report sent by the State Government is required to be considered by the Central Government or not. It was clearly observed in the aforesaid case in Para : 21 that the Central Government has to consider the report with reasonable expedition notwithstanding that no representation has been made by the detenu to the Central Government. It has to apply its mind to it keeping in view the policy and objects of the Act. Parliament intended that Central Government could also keep a vigilent eye in the matter of life and liberty of the citizen guaranteed by Article 21 of the Constitution of India. Thus, according to the Full Bench of the Gauhati High Court the report sent by the State Government is to be considered by the Central Government.

5. Shri B.T.Rao representing the Union of India, on the other hand, has referred to Supreme Court pronouncement in Sher Mohmed v/s. State of Bengal, reported in A.I.R. 1975 SC 2049 and Mohmad D.A.Khan v/s. State of West Bengal, reported in AIR 1976 SC 734 and contended, after going through the provisions of Section 3, especially Section 3(4) of the Prevention of Black Marketing Act, that the only obligation cast under this section on the state Government is to send the report with all materials and since it was done by the State Government there was sufficient compliance and there is no provision in the statute that the Central Government should consider the report of the State Government. The question of consideration of report submitted by the

State Government to the Central Government was not directly considered in the aforesaid two cases by the Apex Court, so also in the case of Virendra v/s. Union of India, reported in A.I.R. 1993 SC 962. The Division Bench of this Court, however, in the case of M.U.Makwana v/s. District Magistrate, reported in 1993 (1) G.L.H. 892 had an occasion to examine this question. The Division Bench was of the view that the report submitted by the State Government is to be considered by the Central Government though the Central Government is not obliged to communicate to the detenu that the report of the State Government was considered by it. The Division Bench further laid down that such report is to be expeditiously considered by the Central Government. On the point of expedition no hard and fast rule was laid down and it was left for adjudication according to the facts and circumstances of each case. It is therefore not necessary to dwel in detail on this point whether the report sent by the State Government is to be considered by the Central Government or not. The answer to this question is that the report has to be considered by the Central Government and it is not hollow formality that the State Government should send the report to the Central Government and the Central Government should throw it in the waste paper basket. Since the Division Bench of this Court has not gone further as to in what manner the report is to be considered and what are the provisions of the Act it seems desirable to make certain observation to clarify confusion in the mind of the Central Government. Shri B.T.Rao, contended that compliance of Section 3(4) of the Act is only to be seen by the Central Government and once the report is sent to the Central Government by the State Government and the Central Government comes to the conclusion that the requirements of Section 3(4) were complied with nothing more is to be done by the Central Government. This contention does not appear to be correct. Section 3(4) of the Act simply lays obligation on the State Government to report within seven days the fact to the Central Government together with grounds on which the order has been made and such other particulars, as in the opinion of the State Government have bearing on the necessity for the order. It is true, as contended by Shri B.T.Rao that the Act does not lay any specific obligation upon the Central Government to consider the report of the State Government, but if there is any ambiguity in the provisions of the Act golden rule of, construction has to be kept in mind and the rule of harmonious construction of various provisions of the Act has also to be kept in mind.

6. Section 3(4) of the Act cannot be read in isolation. Section 14 of the Act has also to be taken into consideration. Section 14 of the Act provides that without prejudice to the provision of Section 21 of the General Clauses Act the detention order may at any time be revoked or modified, notwithstanding that the order has been made by the officer of the State Government or by the Central Government. If power of revocation has been conferred u/s.14 of the Act the Central Government has to keep in mind this provision and on receipt of report it has to be considered whether the report of the State Government is to be confirmed or is to be revoked. It is for this purpose that the obligation is cast upon the Central Government to consider the report of the State Government. On the point of expeditious consideration of this report since no authority of this court was placed, I think it proper to make certain observations which would act as guidelines for the Central Government-

i) Once the report from the State Government is received by the Central Government it has to be considered by the Central Government;

ii) The Central Government for this exercise does not mean Central Government in abstract or President of India or Minister concerned. For this exercise the Central Government will mean the officer or authority having power or delegated power to consider such report;

iii) After receipt of report, the report of the State Government is to be considered by such officer and in case he thinks that procedural safe-guard was not observed and compliance of Section 3(4) of the Act was not made by the State Government it may pass suitable orders.

iv) The officer or the Authority dealing with such report is entitled to keep in mind Section 14 of the Act and to pass suitable orders if he so thinks fit considering material on record;

v) It is also well within the jurisdiction of the officer or the authority to postpone final decision, having legitimate expectation that representation is likely to be received from the detenu directly or through the State Government shortly thereafter.

Acting on such legitimate expectation the authority or the officer can postpone final decision on the report awaiting representation from the detenu and also awaiting parawise comments and further materials from the State Government if so required by the authority.

vi) The authority will be well within its jurisdiction to call from the State Government English translation of the representation, if the representation is made in regional language and not in English or in national language. Upon receipt of such report and parawise comments the Authority will be justified in finally considering the report and taking decision on the representation of the detenu in the light of the report of the State Government.

vii) If the representation of the detenu is rejected the Central Government is bound to communicate the rejection order to the State Government forthwith for communication to the detenu through Jail Authorities.

viii) If the authority considers the report of the State Government and does not deem it proper to suo-motu revoke the detention order it is not obliged to send any communication to the detenu either through the State Government or directly to the detenu. Thus, the second stage for consideration of the report of the State Government in these circumstances would be after receipt of representation from the detenu.

ix) If successive representations are made the Authority will be well within its powers to reconsider the report of the State Government again while dealing with such successive representation. Consequently if this exercise is also done at that stage it cannot be said that the Central Government has not considered the report of the State Government or has delayed in considering the report of the State Government.

x) In dealing with such report the principle of first come first serve should invariably be followed by the Central Government.

7. Coming to the facts of the case before me it has to be seen whether the report of the State Government was considered by the Central Government or not. For this Mr.Prajapati has relied upon the Affidavit of Shri A.L.Makhijani, Under Secretary in the Department of Consumer Affairs, Ministry ofFood and Consumer Affairs, New Delhi, and has contended that there is no whisper in this affidavit that the Central Government had considered the report submitted by the State Government. Before examining the affidavit in detail it is pertinent to point out that in-efficiency of the person drafting the affidavit should not stand in the way of administration of justice. If the affidavit is vaguely drafted no benefit is to be given to the other side.

8. From Para : 3 of the Affidavit it is clear that it was well within the knowledge of the Central Government that the detention order passed by the Detaining Authority was approved by the State Government on 16.9.1998 and a report thereof was sent vide letter dated 7.9.1998 along with grounds of detention and other relevant material which was received by the Central Government on 19.9.1998. Unless the report and entire material was seen this affidavit could not be filed indicating that the grounds of detention and other relevant materials were also annexed with the report of the State Government. There is thus implied deposition and admission that the report was considered by the Central Government.

9. So far as the other Para : 4 of this Affidavit is concerned it also indicates that other material including report sent by the State Government was considered by the Central Government while dealing with two representations dated 28.9.1998 and 3.10.1998. It is deposed in this para that after considering the representation along with parawise comments of the State Government and other relevant records (emphasis supplied by me) the same were rejected by the Competent Authority in the Central Government on 20.10.1998. Similarly regarding other representations dated 3.10.1998 it is deposed in the same para that the said representation was received on 21.10.1998 and after considering the representation along with parawise comments of the State Government and other relevant record the same was rejected by the competent Authority on 23.10.1998. Thus, these two recitals clearly indicate that while dealing with two representations other relevant records were also considered by the Central Government. Other relevant records have no reference to any extraneous matter, but

to the report of the State Government in which other record and material was included. Thus, it is made out from the inefficiently drafted affidavit that the report of the State Government was considered by the Central Government.

10. The next point for consideration is whether such report submitted the State Government was expeditiously considered or not. Counter Affidavit admits that the Central Government received the report of the State Government on 19.9.1998. Expeditious consideration does not mean that the report should be considered immediately. It took some time and on 6.10.1998 first representation from the wife of the detenu was received by the Central Government. The Central Government, therefore, thought it proper to consider the representation along with the record and not to approve or disapprove the detention order earlier. The second representation was also received and the two representations were expeditiously disposed of. It hardly took more than a month. Consequently on the facts and circumstances of the case it can further be said that the report of the State Government was expeditiously considered by the Central Government and since the decision rejecting the two representations was communicated it further implies that it was also communicated that the report of the State Government too was considered by the Central Government. Thus, on this ground the detention order cannot be struck down.

11. Another contention has been that the representation dated 28.9.1998 sent by the wife of the detenu was received in the concerned section on 6.10.1998 whereas the information from Postal Department shows that it was received on 30.9.1998 and there is no explanation of delay and that there is also no explanation as to when the parawise comments were prepared and forwarded to the Central Government. Affidavit of Shri A.L.Makhijani shows that the representation dated 28.9.1998 was received in the concerned section on 6.10.1998. Parawise comments were demanded from the state Government telegraphically on the same day. Another representation dated 3.10.1998 was received on 15.10.1998. Parawise comments were again called for and these two representations were expeditiously disposed of. Of course, some time was taken in sending the parawise comments. Parawise comments were received on one representation on 16.10.1998 and regarding other representation parawise comments were received thereafter. This delay cannot be said to be inordinate delay in sending the parawise comments. The parawise

comments were called from the State Government. The State Government was to call for comments from the detaining Authority and other officers and therefore it is not a case where there was delay in submission of parawise comments. The delay in receipt of representation stands explained. The representation was not addressed to Secretary, Ministry of Civil Supply and Public Distribution, Shastri Bhavan, New Delhi, rather it was addressed to the Minister concerned and as such some time was likely to be taken in reaching the representation to the concerned Authority.

12. The Central Government through telegram dated 6.10.1998 asked the State Government to send parawise comments. 6.10.1998 has to be excluded. Upon receipt of telegram the State machinery went into motion. The parawise comments were transmitted on 16.10.1998. Thus, 9 days delay, by no stretch of imagination, can be said to be inordinate delay and as such on this ground also the detention order cannot be said to have become invalid.

13. Another contention of the learned Counsel for the petitioner has been that the detention order suffers from non-application of mind. Two points were pressed to show that the detention order and the grounds of detention suffer from the vice of non-application of mind. The first point argued was regarding the statement of the wife of Shaukatali and the entries in her ration card. It was contended that the statement of the lady and the entries in the ration card were not considered properly by the Detaining Authority. Needless to say that in exercise of jurisdiction under Article 226 of the Constitution of India this Court is not sitting as a Court of Appeal over subjective satisfaction of the detaining Authority. The only thing to be examined in exercise of this jurisdiction is whether procedural safe-guard provided under Article 22, Clause (5) of the Constitution of India have been followed and observed or not. It is only while considering this aspect that supply of material documents, supply of grounds of detention and other materials are taken into consideration. The grounds ofdetention when examined will show detailed chart and detailed material on the basis of which the detaining Authority came to the subjective satisfaction regarding black marketing activities of the petitioner. It was not a case where subjective satisfaction of the authority was based only on the strength of the statement of the lady and entries in her ration card. Other over-whelming materials have been furnished in the grounds of detention and if there

was over-whelming material before the detaining Authority to reach subjective satisfaction it would be incorrect to say that if one material was not properly considered the entire subjective satisfaction stands vitiated.

14. In this context another contention has been that the detaining Authority considered the black marketing activities of the petitioner only in respect of wheat, rice, sugar and palmolin, but he has also made mention of black marketing activities of the petitioner relating to kerosene and thus it is a case of non-application of mind and that the detaining Authority had considered extraneous matter in reaching subjective satisfaction and this has rendered the detention order illegal. Reliance was placed upon the Division Bench pronouncement of this Court in G.B.Patel v/s. District Magistrate, reported in 1990 (2) G.L.R. 1288. This case is distinguishable on facts. In this case the detenu was detained with a view to preventing him from obstructing maintenance of supply of essential commodity, viz. kerosene. As against this the grounds of detention inter-alia indicated that the detaining Authority did consider further fact as to whether the detenu had colluded with another person in getting diesel adulterated with kerosene and had facilitated black marketing which could be obviously with reference to diesel. It is, therefore, obvious that here the allegation against the detenu was that he was engaged in black marketing activities of kerosene. The detaining Authority was of the view that he also helped another person in adulterating diesel with kerosene. This was certainly extraneous matter on which the detention order could be quashed. There is no such extraneous matter in the case under consideration. Para : 2 of the grounds of detention clearly indicates that the licence to the petitiner was given for food item, viz. food grain, sugar, wheat, rice and edible oil and also for kerosene. In Para : 10 of the grounds of detention black marketing activities of the petitioner regarding kerosene have been high-lighted. It has been alleged that instead of selling kerosene at the fixed price of Rs.2.70 ps. per ltr. he was selling it at the rate of Rs.15/- for five ltrs. The detaining Authority also considered on this point various ration cards numbering 73. Consequently it cannot be said that the detainng Authority was influenced by extraneous material. The detaining Authority has his own option to formulate the grounds of detention. If he decided to formulate the grounds of detention regarding wheat, sugar, rice, palmolin, etc. first and then decided to disclose black marketing activity in kerosene it cannot be said that the formulation of grounds suffered from any vice of non-application of mind. It is

not for this Court to guide the detaining Authority in what manner the grounds of detention are to be formulated. I therefore do not find any substance in the contention that the grounds of detention suffer from the vice of non-application of mind.

15. The last contention has been regarding unexplained delay in connection with representation dated 3.10.1998 by the Central Government. The contention has been that the representation was given to the Jail Authority on 3.10.1998. The Affidavit of the Central Government shows that this representation was received from the Jail Authority on 15.10.1998. On the basis of this material it was urged that the delay between 3.10.1998 to 15.10.1998 has not been explained by the Central Government. To clarify this position additional affidavits were called from the Jail Authority and also from the Central Government. The counter Affidavit of Shri V.B.Chauhan, Jailor, District Jail, Bhavnagar, shows that the representation dated 3.10.1998 addressed inter-alia to the Secretary to the Government of India, Ministry of Civil Supplies and Consumer Affairs, New Delhi, was immediately forwarded by Registered A.D. leter No. 516 dated 3.10.1998. Annexure : 2 has been annexed showing copy of postal receipt. Thus, the State Government had discharged its obligation by immediately forwarding the representation to the concerned authority of the Central Government. From additional note submitted by Shri B.T.Rao annexing copy of his letter and copy of Fax letter from the Central Government, it is now clear that such correspondence was received in the section of the Central Government known as Receipt and Issue Section. This letter was actually received on 14.10.1998 in receipt and IssueSection. Action was taken right from 15.10.1998. The question is who is responsible for delay between 3.10.1998 to 14.10.1998. The law on the subject is quite settled. The Post office is the Agent of the sender of the letter and not of the addressee. Sender of the letter was the State Government. It had discharged its statutory obligation by immediately sending the representation on 3.10.1998. The fault of the Agent of the sender in the circumstances of the case can not relate back to the fault of the sender of the letter. The fault of the post office also cannot be imputed to be the fault of the addressee. The delay and the time taken in the postal transit has to be excluded as has been held by the Apex Court in Virendrakumar Ram v/s. Union of India, reported in A.I.R. 1993 SC 962 (at Page : 967). Consequently on this ground also the impugned order cannot be quashed.

16. No other point was pressed.

17. For the reasons stated above there is no merit in this writ petition. The detention order is found to be perfectly valid. The writ petition is, therefore, dismissed.

sd/-

Date : March 04, 1999 (D. C. Srivastava, J.)

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